

MICHAEL G. COMMONS

IBLA 80-275

Decided February 24, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. I MC 45799.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

APPEARANCES: Michael G. Commons, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael G. Commons has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 21, 1979, declaring his Falcon Mountain placer mining claim abandoned and void for failure to timely file a copy of his notice of location as required by section 314(b) of the Federal Land Policy and Management Act of

1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and its implementing regulation, 43 CFR 3833.1-2(b). BLM also noted that appellant had not submitted the required filing fee. According to BLM, appellant's mining claim was located on April 10, 1979. However, a copy of his notice of location was not received by BLM until October 22, 1979, well after the 90-day deadline for filing.

In his statement of reasons for appeal, appellant states that the actual date of location of his claim was August 10, 1979, as noted on his "corner posts of discovery," but that it was incorrectly typed as April 10, 1979, in the BLM decision. ^{1/} Furthermore, he points out that the filing fee was included with the copy of his notice of location, that it "has cleared the bank" and that a "record of recording has been received" for the filing fee. He subsequently alleged that a copy of his cancelled check had been enclosed with his notice of appeal.

[1] Pursuant to 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, located after October 21, 1976, is required to file a copy of the notice of location in the proper BLM office within 90 days after the date of location of the claim. Furthermore, such filing must be accompanied by a "one time \$5 service fee." 43 CFR 3833.1-2(d).

Pursuant to 43 CFR 3833.4(a), failure to file an instrument required by 43 CFR 3833.1-2(b) within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void. Beryl Rhodes, 46 IBLA 287 (1980); Nevada Pacific Co., Inc., 46 IBLA 208 (1980).

Submission of the filing fee is mandatory. Without it there can be no recordation. Topaz Beryllium Co., v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal pending; Philip I. Griner, 51 IBLA 179 (1981); Nevada Pacific Co., Inc., supra. BLM has no record of a filing fee submitted by appellant and no copy of a cancelled check appears in the case file. Even if we were to hold that appellant's October 22 filing was within 90 days of the "date of location" of his mining claim, see 43 CFR 3833.0-5(h), the claim must be deemed abandoned and void because appellant never paid the service fee. Philip I. Griner, supra; Fleck Mining and Investment Co., 49 IBLA 187 (1980).

^{1/} The location notice in the case record, signed by Michael G. Commons, contains the handwritten date of April 10, 1979, as the date of location of the claim. We note that the assertion that the date of location shown on the location notice is simply a typographical error or a scrivener's error is becoming a familiar one. See John C. Buchanan, 52 IBLA 387 (1981); Lee Resources Management Corp., 50 IBLA 131 (1980); P & S Mining Co., 45 IBLA 115 (1980); Carl Dowler, 44 IBLA 192 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

52 IBLA 398

